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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LOUIS CHIARAMONTE,

Plaintiff - Appellant,

v.

SANTA CRUZ BIG TREES & PACIFIC
RAILWAY COMPANY, a corporation,

Defendant - Appellee.

No. 07-17234

D.C. No. CV-06-01834-JW

MEMORANDUM *

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted April 17, 2009**
San Francisco, California

Before: NOONAN, ARCHER, *** and McKEOWN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Glenn L. Archer, Jr., Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

“Equitable tolling may be applied if, despite all due diligence, a plaintiff is unable to obtain vital information bearing on the existence of his claim.” *Santa Maria v. Pacific Bell*, 202 F.3d 1170, 1178 (9th Cir. 2000). Here, Louis Chiaramonte (“Chiaramonte”) presented no evidence that he was unaware of his injury, or that he acted with any diligence to investigate whether he had a claim under the Federal Employers’ Liability Act (“FELA”), 45 U.S.C. § 51, *et seq.* Therefore he is not entitled to equitable tolling: “The absolute lack of any effort on his part to inquire about available options defeats his equitable tolling claim.” *See Huseman v. Icicle Seafoods, Inc., Inc.*, 471 F.3d 1116, 1120 (9th Cir. 2006).

Chiaramonte also argues that his employer, Santa Cruz Big Trees & Pacific Railway Co. (“SCBT”), should be equitably estopped from asserting the statute of limitations against him because SCBT helped him to receive California workers’ compensation but did not inform him of his potential FELA claim. The equitable estoppel analysis “focuses primarily on the actions taken by the defendant in preventing a plaintiff from filing suit.” *Santa Maria*, 202 F.3d at 1176. In order to assert equitable estoppel, the plaintiff must demonstrate both actual and reasonable reliance on the defendant’s conduct or representations. *Id.* It was unreasonable for Chiaramonte to assume that SCBT’s assistance with obtaining workers’ compensation indicated that no federal remedies were available. *See Huseman*, 471 F.3d at 1123-24 (finding same).

Accordingly, we **AFFIRM**.